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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

IN RE: HIGH-TECH EMPLOYEE
ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:
ALL ACTIONS

Master Docket No. 11-CV-2509-LHK

**DEFENDANTS' JOINT
ADMINISTRATIVE MOTION TO SEAL
AND MOTION TO REMOVE
INCORRECTLY FILED DOCUMENT
AT DOCKET NUMBERS 249**

Pursuant to N.D. Cal. Civ. L.R. 7-11 and 79-5, Defendants hereby jointly move to seal (i) portions of Plaintiffs' Consolidated Reply In Support of Motion for Class Certification and Opposition to Defendants' Motion to Strike the Report of Dr. Edward E. Leamer ("Reply") (proposed redacted version attached hereto as Exhibit A), (ii) all or portions of Exhibits 1, 2, 3, 6, 10, 13, 15-17, 19, 20, 22-27, 29, and 30 to the Declaration of Dean Harvey filed in support of Plaintiffs' Reply (proposed redacted versions attached hereto as Exhibit B), and (iii) portions of the Reply Expert Report of Dr. Edward Leamer, Ph.D. ("Expert Report") (proposed redacted version attached as Exhibit C). This information has been designated Confidential or Attorneys-Eyes Only under the Stipulated Protective Order (Modified by the Court) (Dkt. No. 107). Defendants are filing corresponding declarations in support of the respective sealing requests.

Defendants have prepared a chart (Appendix A) that lists the specific exhibits and page numbers of the Reply and Expert Report that the Defendants seek to seal (in whole or in part) and the corresponding declaration(s) that have been submitted in support of the respective sealing requests. Defendants seek to seal only a subset of the exhibits and portions of the Reply and Expert Report submitted by plaintiffs under seal pursuant to L.R. 79-5. The proposed order sets forth the specific exhibits and portions of the Reply and Expert Report that Defendants request to seal.

I. LEGAL STANDARD

Rule 26(c) of the Federal Rules of Civil Procedure provides broad discretion for a trial court to permit sealing of court documents for, inter alia, the protection of "a trade secret or other confidential research, development, or commercial information." Fed. R. Civ. P. 26(c)(1)(G). The Ninth Circuit has "carved out an exception to the presumption of access to judicial records for a sealed discovery document [attached] to a nondispositive motion," where the requesting party shows good cause exists to keep the records under seal. *Navarro v. Eskanos & Adler*, No. C-06 02231, 2007 U.S. Dist. LEXIS 24864, at *6 (N.D. Cal. March 22, 2007) (citing *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) ("[A] 'particularized showing' under the 'good cause' standard of Rule 26(c) will 'suffice[] to warrant preserving the secrecy of sealed discovery material attached to nondispositive motions.'"); see also *Pintos v. Pacific*

1 *Creditors Assoc.*, 565 F.3d 1106, 1115 (9th Cir. 2009) (“In light of the weaker public interest in
2 nondispositive materials, we apply the ‘good cause’ standard when parties wish to keep them
3 under seal.”).

4 **II. GOOD CAUSE EXISTS TO SEAL DEFENDANTS’ CONFIDENTIAL**
5 **INFORMATION**

6 The redacted portions of the Reply, Exhibits 1, 2, 3, 6, 10, 13, 15-17, 19, 20, 22-27, 29,
7 and 30 to the Harvey Declaration, and the Expert Report contain confidential and commercially
8 sensitive information about employee compensation, including Defendants’ compensation data
9 as well as information that reflects certain Defendants’ internal decision-making regarding their
10 business strategies related to compensation and internal assessments of their and other
11 employers’ competitive position in the labor market. Defendants also seek to keep under seal
12 those materials that reflect compensation practices, strategies and policies; recruiting and hiring
13 data, practices, strategies and policies; and personal identifying information of employees or
14 candidates. Defendants designated the foregoing information “Confidential” or “Attorneys Eyes
15 Only” under the Protective Order.

16 As the accompanying declarations demonstrate, Defendants keep the sealed information
17 confidential and the public disclosure of this information would cause each Defendant harm by
18 giving third-parties (including individuals responsible for competitive decision-making) insights
19 into confidential and sensitive aspects of each of the Defendants’ strategies, competitive
20 positions, and business operations, allowing these third-parties to potentially gain an unfair
21 advantage in dealings with and against each of the Defendants. A significant portion of the
22 sealed information is employee compensation data. This type of information is regularly sealed
23 because of its confidential and private nature. *See Renfro v. Unum, et al.*, No. 09-2661, 2010 BL
24 104197 (N.D. Cal. May 10, 2010) (granting a motion to seal records containing plaintiffs’ salary
25 information); *Nettles v. Farmers Ins. Exch.*, No. C06-5164, 2007 WL 858060, at *2, 2007 BL
26 247444 (W.D. Wash. Mar. 16, 2007) (holding that salary review notices for third parties “who
27 have not chosen to have their salary history placed into the public record” could be sealed.);
28 *EEOC v. Kokh, LLC*, No. CIV-07-1043, 2010 U.S. Dist. LEXIS 82526, at n.1, 2010 BL 187807

1 (W.D. Okla. Aug. 09, 2012) (noting that portions of summary judgment materials were filed
2 under seal because they contained “confidential salary information”).

3 Similarly, compensation policies, practices and decisions are routinely subject to a
4 sealing order. *In re Wells Fargo Loan Processor Overtime Pay Litigation*, No. C 07-01841, at
5 *16, 2008 U.S. Dist. LEXIS 53616, 2008 BL 123131 (N.D. Cal. June 09, 2008) (noting that a
6 “compensation policy” was filed under seal); *Hertz Equip. Rental Co. v. Useda*, No. CV-10-
7 4953, 2010 BL 259718, at *2 (N.D. Cal. Nov. 02, 2010) (granting a temporary restraining order
8 to enjoin a former employee from using a company’s “confidential and/or trade secret employee
9 compensation information”).

10 In addition, good causes exists to seal confidential information relating to a company’s
11 internal business, recruiting or hiring practices, strategies and policies, including confidential
12 analyses of a company’s market position. *See* Fed. R. Civ. Proc. 26(c)(1)(G) (permitting sealing
13 of “a trade secret or other confidential research, development, or commercial information”);
14 *Krieger v. Atheros Commc’ns, Inc.*, Case No. 11-CV-00640, 2011 U.S. Dist. LEXIS 68033 at
15 *3-4 (N.D. Cal. June 25, 2011) (holding that a company could seal a presentation from its
16 investment adviser that contained “sensitive and confidential information, including long-term
17 financial projections, discussions of business strategy, and competitive analyses”); *Network*
18 *Appliance, Inc. v. Sun Microsystems Inc.*, Case No. C-07-06053, 2010 U.S. Dist. LEXIS 21721,
19 at *9 (N.D. Cal. Mar. 10, 2010) (sealing “internal information regarding [defendant’s] business
20 strategies and opportunities that were not widely distributed”); *see also TriQuint Semiconductor,*
21 *Inc. v. Avago Techns. Ltd.*, Case No. CV 09-531, 2011 U.S. Dist. LEXIS 143942, at *9 (D. Ariz.
22 Dec. 13, 2011) (granting motion to seal “market analysis information,” under “compelling”
23 reason standard applicable to dispositive motions, including a “spreadsheet tracking information
24 regarding potentially competitive products,” and other business strategy documents, such as
25 information relating to “product competitiveness, and market and technological opportunities
26 and risks”).

27 Additionally, good cause exists to seal information pertaining to Defendants’ recruiting
28 policies and practices that are proprietary business methods and/or trade secrets. This

1 confidential and commercially sensitive business information is non-public and should remain
 2 confidential under Rule 26(c)(1)(G) (permitting sealing of “a trade secret or other confidential
 3 research, development, or commercial information”); *see also* Cal. Civ. Code § 3426.1(d)
 4 (defining trade secrets as information that “(1) Derives independent economic value, actual or
 5 potential, from not being generally known to the public or to other persons who can obtain
 6 economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable
 7 under the circumstances to maintain its secrecy.”).

8 Good cause also exists for sealing the identities and personal contact information of
 9 specific employees or applicants that are contained in the Motion or accompanying materials.
 10 These employees or applicants have not sought to make their identities known or placed in the
 11 public record. *Nettles* at *2 (holding that the interests of private parties outweighed the public’s
 12 right of access with respect to information pertaining to third party salary and employment
 13 separation information).

14 **III. MOTION TO REMOVE INCORRECTLY FILED DOCKET NUMBER 249**

15 Defendants also respectfully move to remove two incorrectly filed documents. On
 16 December 10, 2012, Plaintiffs e-filed the Reply Expert Report of Edward E. Leamer, Ph.D. (Dkt.
 17 No. 249) (“Reply Expert Report”) along with a request to file certain portions under seal
 18 pursuant to Local Rule 79-5(c). The filed document, however, disclosed certain information that
 19 should have been redacted. *See* Defendants’ Administrative Motion to File under Seal filed
 20 concurrently herewith. In particular, the filed document (Dkt. No. 249) redacted certain
 21 headings in the main document of the Reply Expert Report that contain confidential and highly
 22 sensitive information about the Defendants, but failed to redact the same corresponding headings
 23 in the Table of Contents of the Reply Expert Report. In particular, Headings III.A. and III.C. in
 24 the Table of Contents on page i of the Reply Expert Report should have been redacted.
 25 Defendants have made the correct redactions in the proposed redacted version of the Expert
 26 Reply Report, attached hereto as Exhibit C. Accordingly, Google respectfully requests that
 27 Docket No. 249 be permanently locked because it contains confidential information as indicated
 28 above, and that the corrected version attached as Exhibit C be filed in the public docket instead.

Also, on December 12, 2012, Plaintiffs filed a Letter from Brendan Glackin re Correction to the Reply (“the Glackin Letter”) along with a request to file certain portions under seal pursuant to Local Rule 79-5(c). The Glackin Letter includes information Intel had designated for protection under the protective order. Accordingly Intel respectfully requests that the unredacted version of the Glackin Letter be filed under seal because it contains confidential information as indicated above.

IV. CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court order Plaintiffs’ Reply and accompanying materials to be placed under seal. In accordance with Civil Local Rule 79-5(d), a proposed order granting Defendants’ Joint Administrative Motion to Seal has been lodged with the Clerk in hard copy and served on counsel for Plaintiffs. In accordance with Civil Local Rule 79-5(d), Defendants’ proposed redacted version of the Reply, Exhibits and Expert Report are being lodged with the Clerk in hard copy within a sealed envelope.

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ATTESTATION: Pursuant to General Order 45, Part X-B, the filer attests that concurrence in the filing of this document has been obtained from all signatories.

SVI-117843v2